

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**IN THE MATTER CONCERNING
JUDGE PAUL E. ZELLERBACH**

**DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT**

This disciplinary matter concerns Judge Paul E. Zellerbach, a judge of the Riverside County Superior Court since 1995, whose current term began January 2001. Judge Zellerbach and his attorney, Edith R. Matthai, Esq., appeared before the commission on June 28, 2006, pursuant to rule 116 of the Rules of the Commission on Judicial Performance, to contest the imposition of a public admonishment. Having considered the written and oral objections and argument submitted by Judge Zellerbach and his counsel, and good cause appearing, the Commission on Judicial Performance issues this public admonishment pursuant to article VI, section 18(d) of the California Constitution, based upon the following Statement of Facts and Reasons:

STATEMENT OF FACTS AND REASONS

In October 2004, Judge Zellerbach presided over the murder case of *People v. Joseph Francis Close*, which involved a drunk driving accident in which the defendant's girlfriend and unborn baby were killed. Judge Zellerbach delayed taking a verdict in this case because he was at a baseball game in Anaheim. He refused to allow another judge who was available to take the verdict, and did not return from the game to take the verdict himself, as follows.

The *Close* case went to the jury on October 4, 2004. During the late morning of October 5, 2004, Judge Zellerbach left court to attend an Angels baseball playoff game in Anaheim that afternoon. Before he left, Judge Zellerbach made arrangements for Judge

Robert Spitzer to answer any questions that the deliberating jury might have. However, he did not arrange to have Judge Spitzer or any other judge take the verdict.

The jury reached a verdict around 2:30 p.m. on October 5. Judge Zellerbach's clerk immediately tried to reach the judge on his cell phone. When he did not answer, she left a message regarding the verdict. When Judge Zellerbach did not promptly return her call, the clerk contacted Judge Christian Thierbach, through his clerk, and determined that Judge Thierbach was available to take the verdict. Judge Zellerbach's clerk then contacted the attorneys in the *Close* case and told them to come to court at 3:30 p.m., in order to allow them sufficient time to have the defendant's and victim's families present for the verdict.

Judge Zellerbach then returned his clerk's telephone call. When the clerk told the judge that Judge Thierbach could take the verdict, Judge Zellerbach said that he wanted to do so himself, and instructed his clerk to tell the attorneys to return to court the next morning, October 6. The clerk reached the attorneys before they were to arrive at court that afternoon and relayed the judge's message. However, the attorneys came to court that afternoon and asked the clerk to contact Judge Zellerbach again, in order to convey their wish to have the verdict taken that day.

When the clerk telephoned Judge Zellerbach at the baseball game again, he reiterated that he did not want another judge to take the verdict, and that he would take the verdict himself the next day. Judge Zellerbach took the verdict on the morning of October 6.

Canon 3A of the Code of Judicial Ethics requires that judicial duties take precedence over all other activities of a judge. Judge Zellerbach failed to give his judicial duties precedence. He went to a baseball game while a jury was deliberating on a homicide case, without having arranged for another judge to take the verdict. When informed that the jury had reached a verdict, he was unwilling to allow another judge to take the verdict. This same conduct also violated canon 3B(8), which requires a judge to dispose of all judicial matters promptly and efficiently. In addition, Judge Zellerbach's conduct was inconsistent with canon 2A, which requires that a judge "shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

In his written objections under rule 116 to the commission's Notice of Intended Public Admonishment and during his appearance before the commission on June 28, 2006, Judge Zellerbach and his attorney denied that Judge Zellerbach's actions reflect a failure to give his judicial duties precedence. The judge's written argument on this point was that he went to the game without arranging for another judge to take the verdict because he did not think the jury would return with a verdict that day, given the complicated issues in the trial. Judge Zellerbach has nearly 30 years of experience as a judge and a prosecutor, on the basis of which he must have known that it is not possible to predict how long a jury will deliberate, irrespective of how complicated the issues or how long the trial. Indeed, during his appearance before the commission, the judge conceded the impossibility of making such predictions.

As a further basis for objecting to the proposed discipline, Judge Zellerbach asserted that he instructed his clerk to put the case over until the next day, rather than allowing another judge to take the verdict, because he was concerned about complicated legal issues in the case and as related to the possible verdict. Given the asserted complexity of the legal issues, Judge Zellerbach should not have gone to the baseball game while the jury was deliberating. The judge acknowledged the correctness of this conclusion during his appearance before the commission.

As part of his oral presentation, Judge Zellerbach also referred to other cases where other judges had delayed taking a verdict until the next day. There likely are instances where good cause exists for such delay. A judge attending a baseball game is not such an instance, however.

Judge Zellerbach acknowledged during his appearance that, with the benefit of hindsight, he now realizes he should have let another judge take the verdict in his absence. The commission appreciates that Judge Zellerbach has reevaluated the situation. There was a serious dereliction of judicial duty, nonetheless, by which Judge Zellerbach jeopardized the verdict in a double homicide case and imposed hardship and additional stress on jurors, the families of the victim and the defendant, and on counsel and the defendant. There also was adverse local press coverage concerning the taking of the verdict in the *Close* case; a columnist criticized Judge Zellerbach's absence from court while attending the game, and his refusal to allow another judge to take the verdict. Judge Zellerbach described the commentary as reflecting adversely upon the judiciary in general and upon him personally.

Commission members Mr. Marshall B. Grossman, Judge Frederick P. Horn, Justice Judith D. McConnell, Ms. Patricia Miller, Mr. Jose Miramontes, and Ms. Barbara Schraeger voted for a public admonishment. Commission members Mrs. Crystal Lui, Mrs. Penny Perez, Judge Risë Jones Pichon, and Mr. Lawrence Simi voted for a private admonishment. Commission member Mr. Michael Kahn did not participate.

Dated: August 15, 2006

/s/
Marshall B. Grossman
Chairperson